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**IN THE
COURT OF APPEALS OF INDIANA**

SHAWN ARNOLD,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 48A02-0603-CR-276

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Thomas Newman, Jr., Judge
Cause Nos. 48D03-9609-CF-313 and 48D03-9704-DF-122

September 15, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Shawn Arnold appeals the trial court's revocation of his probation. We address a single dispositive issue, namely, whether the trial court abused its discretion in revoking Arnold's probation.

We affirm.

FACTS AND PROCEDURAL HISTORY

In June of 1997, Arnold pleaded guilty to charges of Burglary, as a Class C felony, Theft, as a Class D felony, Possession of a Controlled Substance, as a Class D felony, and Resisting Law Enforcement, as a Class A misdemeanor. The trial court sentenced Arnold to eleven years, with six years of in-home detention and four years suspended and on probation. The trial court subsequently modified Arnold's sentence, releasing him from the in-home detention and placing him on probation for the balance of his sentence. On January 9, 2003, the State filed a Notice of Probation Violation against Arnold, although the State dismissed that notice on March 3, 2003.

On July 6, 2004, the State filed a second Notice of Probation Violation ("second notice"), and on March 28, 2005, Arnold admitted to violations relating to his failure to pay probation and court fees and his failure to report to his probation officer. The State presented evidence on further alleged violations that Arnold had used "illicit" drugs and took a substantial step toward the commission of a crime involving "illicit" drugs. Appellant's App. at 29.¹ The trial court referred Arnold to participation in a Drug Court

¹ We note that the term "illicit" does not appear in the Indiana Code regarding offenses relating to controlled substances. See Ind. Code § 35-48-4. However, since neither party has challenged use of the term, we interpret "illicit" to be synonymous with "unlawful." See Webster's Third New International Dictionary 1126 (2002).

program on April 18, 2005, and he was formally admitted into the program on June 16.

On September 28, 2005, the Drug Court terminated Arnold from the program for absconding, referring the matter to the trial court. On November 15, Arnold was arrested for possession of a stolen vehicle and fleeing from police, as well as resisting arrest. Shortly thereafter, on November 18, the State filed a third Notice of Probation Violation (“third notice”) against Arnold. The third notice realleged the violations in the second notice, namely, that Arnold had failed to pay necessary fees, report to his probation officer, abstain from “illicit” drugs, and behave well in society, but included a further allegation for failure to behave well that incorporated the events of November 15.² During the evidentiary hearing on the third notice, Arnold admitted that he quit participating in the Drug Court because he “got back into drugs.” Transcript at 63. The trial court found that Arnold had violated the conditions of his probation on each allegation, and the court subsequently revoked his probation. This appeal ensued.

DISCUSSION AND DECISION

Arnold contends that the trial court abused its discretion when it revoked his probation. In particular, he asserts that the trial court improperly considered inadmissible evidence relating to the stolen vehicle allegation and did not give him notice that his failure to complete the Drug Court could result in the revocation of his probation. We review a trial court’s decision to revoke probation under an abuse of discretion standard. Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005), trans. denied. A probation hearing is civil in nature and the State need only prove the alleged violations by a

² The State characterizes the third notice alternatively as a third notice and as an amended notice. Brief of Appellee at 2, 4.

preponderance of the evidence. Cox v. State, 706 N.E.2d 547, 551 (Ind. 1999). We will consider all the evidence most favorable to the judgment of the trial court without reweighing that evidence or judging the credibility of witnesses. Id. If there is substantial evidence of probative value to support the trial court's conclusion that a defendant has violated any terms of probation, we will affirm its decision to revoke probation. Id. The violation of a single condition of probation is sufficient to revoke probation. Wilson v. State, 708 N.E.2d 32, 34 (Ind. Ct. App. 1999). A defendant is not entitled to serve a sentence in a probation program; rather, such placement is a "matter of grace" and a "conditional liberty that is a favor, not a right." Jones, 838 N.E.2d at 1148.

Here, a condition of Arnold's probation was that he abstain from the use of alcoholic beverages and "illicit" drugs during the period of probation. During the hearing on the third notice, Arnold admitted that he had "got back into drugs."³ Transcript at 63. That this activity was related to his absconding from Drug Court is irrelevant; the use of "illicit" drugs was itself a violation of the conditions of his probation. As such, that single violation was sufficient for the revocation of his probation.⁴ See Wilson, 708 N.E.2d at 34. We cannot say that the trial court abused its discretion when it revoked Arnold's probation.

Affirmed.

FRIEDLANDER, J., and DARDEN, J., concur.

³ The State, in its brief, does not mention this admission, but instead focuses on Arnold's admissions at the hearing for the second notice, namely, failure to pay fees and timely report. For simplicity, we look only to the hearing on the third notice, from which the revocation was issued.

⁴ Thus, we need not address Arnold's contentions regarding whether his absconding from Drug Court could result in the revocation of his probation or whether the presentation of evidence on the stolen car allegation violated his rights.